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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,488	04/08/2004	Marina Shereshevsky	0162-1	7402
25901	7590	03/22/2006	EXAMINER	
ERNEST D. BUFF ERNEST D. BUFF AND ASSOCIATES, LLC. 231 SOMERVILLE ROAD BEDMINSTER, NJ 07921			WONG, LESLIE A	
		ART UNIT	PAPER NUMBER	
		1761		

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/820,488	SHERESHEVSKY, MARINA	
	Examiner	Art Unit	
	Leslie Wong	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on January 11, 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7,9-15,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7,9-15,17 and 18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hara (JP 61231958), Kazutada et al (JP 55007013), Masahiro et al (JP 3112454), and Oliver (GB 2294625) for the reasons set forth in rejecting the claims in the last Office action. The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

Hara (JP 61231958) disclose a yogurt comprising vegetable (see abstract).

Kazutada et al (JP 55007013) disclose a yogurt comprising vegetables (see abstract).

Masahiro et al (JP 3112454) disclose yogurt comprising vegetables (see abstract).

Oliver (GB 2294625) discloses a yogurt comprising vegetables (see abstract).

The claims differ as to the recitation of specific cultures and percents.

The disclosed yogurt cultures are notoriously well-known in the art and used for their art-recognized purpose.

In the absence of a showing to the contrary, the amounts claimed are seen to be no more than a matter of choice, dictated by preference, and well-within the skill of the art.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use conventional yogurt cultures and the claimed percents in that of Hara (JP 61231958), Kazutada et al (JP 55007013), Masahiro et al (JP 3112454), or Oliver (GB 2294625) because the use of conventional cultures and preferred amounts is well-within the skill of the art.

Once the art has recognized the addition of vegetable products to yogurt the use and manipulation of types of vegetables and percents employed is merely a matter of choice and well-within the skill of the art.

Applicant's arguments filed January 11, 2006 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach a cooked pureed vegetable content ranging from 30 to 70 percent by weight.

The prior art clearly teaches the addition of vegetables to yogurt as is claimed. The percents claimed are deemed a matter of choice. Furthermore, Oliver (GB 2294625) teaches the addition of 9 to 31 weight percent of flavoring (see page 1). Oliver also teaches that the weight percent may vary as taste demands. In the absence of a showing to the contrary, Applicant is using known components to obtain no more than expected results.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leslie Wong
Primary Examiner
Art Unit 1761

LAW
March 16, 2006